IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE THIRTEENTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI JUSTICE C.V.RAMULU

WRIT PETITION No. 4121 of 1999

Between:

Balwinder Singh S/o Harban Singh
924653403 CISF,
Port Trust Unit, Visakhapatnam.

..... PETITIONER

AND

1 The Deputy Inspector General (SZ),
Central Industrial Security Force,
Ministry of Home Affairs, Annanagar, Chennai.
2 The Commandant, Central Industrial Security Force,

Visakhapatnam Port Trust Unit,
Visakhapatnam.
3 The Inspector General,
Central Industrial Security Force
Head Quarters, RCFL Complex, SW Sector,

Chembur, Mumbai.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an Order, Direction or a Writ one in the nature "MANDAMUS' declaring (1) the action of the 1st respondent in removing the Petitioner from service vide Order No.V-110114/69/95-A6(SZ)/3354, dt. 22.4.96(2) the show cause notice of removal No.V-11-114/69/95-A6(SZ)/1993, dt. 27.3.96 (3) the Order No.V-11014/2/SWS/97-2560, dt.24/28-04-97 of the 3rd respondent and (4) Findings of the Inquiry Officer, as illegal, violative of Rules of CISF and unconstitutional and consequently direct the respondents to reinstate me into service with back-wages and continuity of service

with all attendance benefits.

Counsel for the Petitioner: Mr. A.SRINIVASA SARMA

Counsel for the Respondents: Smt.C.VANI REDDY,Addl SC for CG

The Court made the following :

O R D E R:

This Writ Petition is filed seeking a Mandamus to declare the action of the 1st respondent in removing the petitioner from service vide Order No.V-110114/69/95-A6(SZ)/3354, dated 22-4-1996 as confirmed by the 3rd respondent in his Order No.V-11014/2/SWS/97-2560, dated 24/28-4-1997 as arbitrary and illegal and consequently to direct the respondents to reinstate the petitioner into service with back wages, continuity of service etc.

Petitioner joined the service of the respondent-Central Industrial Security Force as Constable in the month of February,1992 and was posted at Visakhapatnam Port Trust. While so, on 24-8-1995, a charge sheet was issued to him enumerating the following charges:

> " Charge No.1: That CISF No.924653403 Constable Balwinder Singh of 'A' Coy CISF Unit, VPT Visakhapatnam was detailed for 'B' shift duty at H-8 duty post, left his duty post by Jeep No.AP 31-C 1322 at about 2000 hrs on 19.8.95 without any permission from competent authority, which amounts to dereliction of duty.
>
> Charge No.2 : That CISF No.924653403 Constable Balwinder Singh of 'A' Coy CISF Unit, VPT Visakhapatnam along with CISF No.911320028 Head Constable/Driver Virender Singh had forcibly taken two civilians viz., Sri D.Sunil Kumar and Miss U.Mamta near Duty Post at about 200 hrs on 19.8.95 in the Jeep No.AP 31C 1322, assaulted Sri D.Sunil Kumar and using vulgar language tried to physically molest Miss U.Mamta which amounts to gross misconduct.
>
> Charge No.3: That CISF No.924653403 Constable Balwinder Singh of 'A' Coy CISF Unit, VPT Visakhapatnam along with HC/Driver Virender Singh forcibly snatched an amount of Rs.50/- from Sri D.Sunil Kumar and Miss U.Mamta by threatening and shared between them, which amounts to gross misconduct."

After a detailed enquiry into the matter and after giving opportunity to the petitioner to participate in the enquiry, the disciplinary authority – 2nd respondent – passed final orders dated 30-11-1995 holding the petitioner guilty of the charges and imposed penalty of reduction in pay by 3 stages from Rs.900/- to Rs.855/- in the pay scale of Rs.825-15-900-ED-20-1200 for a period of three years with effect from 1-12-1995 with cumulative effect. Aggrieved by this, the petitioner filed an appeal before the 1st respondent-Deputy Inspector General, Chennai. The 1st respondent-appellate authority observed that the disciplinary authority having held that the petitioner was guilty of the charges has imposed a lesser punishment and on examining the gravity of offence, he issued a show cause notice dated 27-2-1996 proposing to enhance the punishment awarded by the disciplinary authority, for which, the petitioner submitted his explanation on 18-3-1996. Thereafter, the appellate authority passed the impugned Order dated 22-4-1996 holding that the petitioner did not make out any new point for consideration, the departmental enquiry has been conducted by the Enquiry Officer as per laid down procedure, petitioner was given all possible/reasonable opportunities to defend himself, there was corroborative evidence of the prosecution witnesses and the petitioner deserved to be condemned severely. Since the petitioner not only involved himself in an unwanted act deliberately, but also tarnished the image of the disciplined force by behaving badly, in the eyes of the public, the petitioner was unfit to continue in the disciplined organization. Considering the gravity of the offence committed, the petitioner deserved to be removed from service. Therefore, in exercise of the powers conferred under sub-rule 2(c)(i) of Rule 47 of CISF Rules,1969, petitioner was removed from service. Dissatisfied with the said order, petitioner further filed appeal before the 3rd respondent-Inspector General, Mumbai. Respondent No.3 found that the charges levelled against the petitioner were conclusively proved basing on the evidence on record. The Enquiry Officer arrived at a right conclusion and there was no reason to take a contrary view to what has been held against the petitioner in the departmental enquiry. Insofar as the grounds raised in the appeal were concerned, they were not sustainable and the 1st respondent rightly enhanced the punishment, since there was overwhelming evidence on record to come to the conclusion that the petitioner deserves to be removed from service. Therefore, the appeal was rejected. Challenging the said orders, the present writ petition is filed.

A detailed counter affidavit has been filed on behalf of the respondents denying the allegations made by the petitioner and supporting the impugned orders. It is *inter alia* stated that the Enquiry Officer conducted the enquiry in accordance with the guidelines laid down under the CISF Rules and the charges were proved. The disciplinary authority had considered all the aspects and awarded the punishment.

I have gone through the Orders passed by the disciplinary authority, appellate authority and also the second appellate authority.

As seen from the above, charge No.1 is a substantial charge and insofar as charge Nos.2 and 3 are concerned, the incidents arose outside employment and nothing to do with the duties attended to by the petitioner. Even otherwise, the petitioner was an young man of about 22 years of age as on the date of removal from service and the only allegation against him was that he forcibly snatched an amount of Rs.50/- along with Virender Singh, Head Constable/Driver, from D.Sunil Kumar and Miss U.Mamta. Except this, there is no gross misconduct as held by the Enquiry Officer, which warrants removal of the petitioner from service of CISF. The disciplinary authority rightly appreciated the evidence and while holding the petitioner guilty of the charges, imposed a proportionate punishment of reduction in the pay scale with cumulative effect.

I am of the opinion that the order of removal from service passed by the 1st respondent as confirmed by the 3rd respondent is shockingly disproportionate to that of the misconduct alleged and proved against the petitioner. In fact, there was no warranting circumstances, which required the appellate authority – 1st respondent – to issue a show cause notice and pass an order of removal from service by enhancing the punishment as imposed by the disciplinary authority – 2nd respondent. There was no further evidence nor any other record, which was placed before the appellate authority to come to a different conclusion. May be, two views are possible on the basis of the evidence on record and one view, which was permissible, was taken by the disciplinary authority and imposed reasonable punishment of reduction in the pay scale with cumulative effect. There were no compelling reasons to disturb the finding of the disciplinary authority by the appellate authority and enhance the punishment and convert the same to that of removal from service. May be, the petitioner needs to be dealt with severely. But, that does not mean that he should have been imposed with the ultimate punishment

of removal from service. Petitioner was about 21 years old at the relevant time and it is not the case of the authorities that he indulged in any such activities earlier and any punishment was imposed on him. Petitioner ought to have been given an opportunity to improve himself. This is not a case where the petitioner caused any loss or misbehaved with any of the higher authorities. May be, there was some dereliction of duty and thereafter he misbehaved with private individuals, which falls outside his employment. For this, the petitioner cannot be punished with a penalty of removal from service, which is shockingly disproportionate, against good conscience and equity. Therefore, the order passed by the 1st respondent dated 22-4-1996 as confirmed by the 3rd respondent dated 24/28-4-1997 is set aside and the order passed by the disciplinary authority – 2nd respondent dated 30-11-1995 is liable to be restored and confirmed. In the result, the order of the 2nd respondent dated 30-11-1995 is restored and the petitioner is entitled for reinstatement into service with continuity of service, but without any back wages from the date of removal from service till the date of reinstatement.

The Writ Petition is allowed to the extent indicated above. There will be no order as to costs.

13-10-2004

prk

The Rule nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this the Wednesday, Thirteenth day of October Two thousand and Four.

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Deputy Inspector General (SZ),
Central Industrial Security Force,
Ministry of Home Affairs, Annanagar, Chennai.
2 The Commandant, Central Industrial Security Force,

Visakhapatnam Port Trust Unit,
Visakhapatnam.
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